

RICK PERRY, Commissioner



RQ-793

## TEXAS DEPARTMENT OF AGRICULTURE

*Making Texas the nation's leader in agriculture while providing efficient and extraordinary service.*

February 23, 1995

The Honorable Dan Morales  
Attorney General of Texas  
P. O. Box 12548  
Austin, Texas 78711-2548

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Opinion Committee

Dear General Morales:

Pursuant to TEX. GOV'T. CODE §402.042, and on behalf of the Texas Department of Agriculture (the "department"), I am requesting your opinion on whether the department has statutory authority under the Texas Agriculture Code (the "Code"), §12.020 and §76.1555, to implement a field citation program for assessing administrative penalties. The program is designed to enable department inspectors to issue citations for certain designated minor violations of department laws and rules.

Under the field citation program, as currently proposed, a department field inspector may identify one of the covered violations during a routine or complaint-initiated inspection and issue a citation. The citation notifies the recipient that a violation has been committed, identifies the type of violation, specifies the administrative penalty being assessed, and informs the recipient of the right to an administrative hearing. If the recipient chooses not to request a hearing to contest the violation, the citation is returned to the department with payment of the administrative penalty. Any recipient who wishes to contest either the occurrence of the violation or the amount of the penalty is entitled to an administrative hearing.

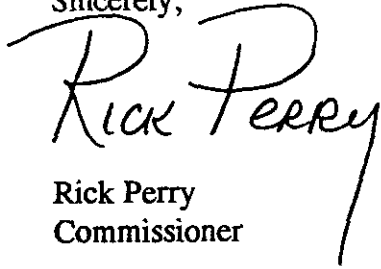
The department is authorized, pursuant to TEX. AGRIC. CODE §12.020(a) and §76.1555(a), to assess administrative penalties for certain violations of the Code. Procedural requirements for assessing penalties are included in TEX. AGRIC. CODE §12.020(e) and §§76.1555(b) - (k). The questions are whether the proposed field citation program, rules for which were published in the Texas Register on June 21, 1994 (proposal) and December 30, 1994 (adoption), meets the applicable procedural requirements, and whether the department has statutory authority for implementing the field citation program. A copy of the final rules is attached for your convenience.

In determining what types of violations would be covered by the field citation program, the department considered the factors required by TEX. AGRIC. CODE §12.020(d) and §76.1555(c). These factors were also considered in arriving at the appropriate penalty

amount for the citations.

Thank you for your assistance with this matter. Please contact Geoff Connor, General Counsel, at 463-7541, if you require additional information in order to respond to this request.

Sincerely,

A handwritten signature in black ink that reads "Rick Perry". The signature is written in a cursive style with a large, stylized "P" at the beginning.

Rick Perry  
Commissioner

RP/GSC/SGZ/ppg